

**Complaint 2005 – No. 9  
In Re Armstong-Condotta-Parlette**

REASONABLE CAUSE DETERMINATION – ORDER OF DISMISSAL

**I. Nature of the Complaint and Procedural History**

The Complainant, David Zamora, alleges that Representatives Mike Armstrong and Cary Condotta, together with Senator Linda Evans Parlette (Respondents), legislators representing the 12<sup>th</sup> Legislative District, may have used undue influence on Mr. Zamora's employer, the Washington State Department of Agriculture (WSDA), to fire Mr. Zamora or if that failed to "banish him from agriculture."

Mr. Zamora alleges the legislators met with his WSDA supervisors and members of the agricultural community on several occasions between May, 2002 and August, 2003 and that he was relieved of his pesticide enforcement duties in late August, 2003. He speculates that the Respondents "perhaps used undue influence" on the WSDA and requests this Board to investigate.

The Complaint was filed on December 6, 2005, the same day as a regularly scheduled Board meeting. The Board concluded, preliminarily, that it had both personal and subject-matter jurisdiction and ordered an investigation pursuant to RCW 42.52.420. The Board discussed the ongoing investigation during executive sessions at regularly scheduled meetings on January 19, February 16, and March 16, 2006.

**II. Jurisdiction**

Some discussion of jurisdiction is warranted in this case and hopefully it will assist others who may wish to file complaints with the Board.

A complaint which requests this Board investigate because of a suspicion that a legislator "perhaps" or may have violated the Ethics Act (Act) through actions ill-defined, does not present the Board with enough specificity to conclude the complaint confers subject-matter jurisdiction. In the present case, the Complainant provided an attachment to the complaint, his narrative of dates, places and names associated with his concerns. We say "concerns" because the Complainant does not directly allege that the Respondents exerted undue influence on WSDA but rather that the legislators met with his WSDA supervisors on several occasions and he, Mr. Zamora, was relieved of his pesticide enforcement duties. He infers that Respondents had a meaningful role in the WSDA employment decision and he "suspects" the Respondents' role involved "undue influence." This suspicion based on an inference is tenuous. However, enough information was provided by Mr. Zamora, including alleged public statements by agricultural consultants that they were part of a "team" which would decide Mr. Zamora's fate and that the Respondents were reported to have had

meetings with this team which included these consultants and WSDA supervisory personnel, to allow the Board to consider the claim of undue influence.

We conclude the Board has both personal and subject-matter jurisdiction.

### **III. The Investigation**

The investigation focused on the 2002 and 2003 meetings which Respondents attended with WSDA officials. Interviews were conducted with meeting participants, including the Respondents. Documents were collected, some through public records requests, and reviewed for any information which might contribute to an understanding of the nature and extent of the involvement of the Respondents. These documents included thirty news articles published by the *Wenatchee World* from October 17, 2000 to July 8, 2005, together with electronic mail and letters to and from the WSDA, Respondents, the Washington State Farm Bureau, members of the agricultural community, Mr. Zamora and other WSDA employees. Attention was also given to the possibility of other meetings or correspondence between the Respondents and the WSDA which were not cited in the Complaint or in the accounts published by the *Wenatchee Word*.

### **IV. Determination of Facts**

Based on the Complaint, materials offered in support thereof and the Board's investigation, the Board makes the following determination of facts. *There is reasonable cause to believe that:*

1. Each Respondent attended one or more of five meetings with WSDA supervisory personnel from May, 2002, until August 7, 2003, and Mr. Zamora was relieved of his duties as a pesticide, field enforcement officer on or about August 20, 2003.
2. In addition to WSDA personnel, the agricultural industry was represented at the meetings by, among others, growers, field men and pesticide applicators.
3. The *Wenatchee World* newspaper reported an "organized effort" to remove Mr. Zamora from his job as a pesticide enforcement officer and indicated or inferred that Respondents were part of this organized effort.
4. Agricultural representatives who met with Respondents and the WSDA will testify that Respondents were mostly observers and asked few questions and made few comments except to express their concern that the WSDA and growers needed to maintain a good working relationship.
5. Respondents did not ask that Mr. Zamora be fired but rather that the Department utilize its judgment on how to address a number of concerns about Department policies, most of which had become focused on the enforcement strategies used by Mr. Zamora.
6. WSDA officials will testify that they were not threatened by the Respondents nor told how to address the issues with Mr. Zamora, that Respondent's presence at the

meetings was requested or assumed by most of the attendees, and the difficulties between the agricultural community and Mr. Zamora highlighted Department policies that needed addressing on a larger scale, in addition to any particular concerns with Mr. Zamora.

7. Representative Armstrong and Senator Parlette were involved in the issues surrounding Mr. Zamora from the first meeting in May 2002. Representative Condotta did not become involved until 2003, after he was first elected to office.
8. Respondents will testify they did not meet with one another or converse on issues of strategy or any plan to affect Mr. Zamora's employment and that their only involvement with each other on issues related to Mr. Zamora took place at the meetings previously identified or through copies of correspondence. Respondent's will further testify that they had no direct contact with WSDA Director Loveland about Mr. Zamora unless one counts letters directed to her but responded to by other WSDA officials as direct contact, and WSDA personnel will testify they had no out-of-meeting contacts with the Respondents about Mr. Zamora except for letter correspondence or e-mail.
9. Mr. Zamora and the Respondents did not attend any of the same meetings.
10. Neither documents nor likely testimony was discovered which contain any threats from Respondents to the WSDA, although the Respondents did take an active interest in the issues surrounding Mr. Zamora, did press the WSDA to solve the problems, and were viewed as supportive of the agricultural community.
11. The Washington State Farm Bureau requested an investigation of Mr. Zamora and his assignment to other duties. Mr. Zamora was investigated and assigned to other duties. Mr. Zamora was, according to the WSDA, cleared of any wrongdoing.
12. Mr. Zamora was not reinstated to his previous duties. He is, and has been throughout, an employee of the WSDA performing duties within the job description of a pesticide enforcement officer but no longer inspects agricultural fields. His supervisors will testify he has suffered no loss of monetary benefits or seniority.

## **V. Determinations of Law**

The Board concludes *there is reasonable cause to believe that*:

1. Respondents use of their official position to assist constituents resolve their differences with the WSDA, a state agency, through attendance at and/or facilitation of a series of meetings between the parties, was a proper exercise of a legislator's discretionary authority and the assistance was rendered within the legislator's scope of authority.
2. Respondent's use of public resources to periodically communicate with the WSDA and the Respondent's constituents in an effort to assist in the resolution of differences between the two, including issues related to the enforcement practices of a WSDA employee, was a proper exercise of a legislator's discretionary authority.
3. Respondents did not use "improper means" in their dealings in their communications with the WSDA on behalf of constituents.

## **VI. Analysis**

The analysis involves two related issues: (1) did the Respondents' involvement with WSDA constitute the exercise of a legislative duty and (2) was that involvement conducted through "improper means"?

- A. There are two provisions of the Act which are applicable to the allegations.

### **RCW 42.52.070**

#### **Special Privileges**

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

### **RCW 42.52.160**

#### **Use of persons, or property for private gain**

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official custody, for the private benefit or gain of the officer, employee or another.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties. . . .

In this Board's first opinion, AO1995 – No. 1, we concluded that certain advisory opinions issued by the former Senate, House and Joint Boards of Ethics, decided under the former Code of Legislative Ethics, would continue to have precedential value. We also determined that former Joint Rule 4, in the old Code, which provided that "A legislator shall not use improper means to influence a state agency, board or commission," was largely encompassed within RCW 42.52.070. These early cases indicate that prohibitions contained in both of these modern statutes were not only present under the Code, but often were part of the same advisory opinion. The early precedents cited in AO1995 – No. 1 dealt with questions involving legislators contracting with state agencies, negotiating contracts for others with state agencies, or representing clients in actions against the state in court or administrative hearings. None of those cases addressed allegations that a legislator had used "improper means" to affect or direct an employment decision by an agency. However, these cases do provide examples of "improper means" which are useful in our analysis of the present case.

In AO1985 – No. 1 the issue was whether a legislator could make sales presentations of a commercial product to a state agency on behalf of the company in which the legislator held a substantial ownership interest. The House Board concluded that "if the member does not directly or indirectly use, or appear to use, his position as a

legislator, or as vice chairman of the Energy and Utilities Committee, to coerce, pressure or intimidate state officials into hearing his presentation or purchasing his product, then there should not be a violation of these (improper means) standards." (at page 2)

AO1985 – No. 2 involved a legislator who sought advice on whether he could contact state agency officials for private business purposes. The legislator would be a marketing and public relations officer for a company and would arrange meetings between company employees and state agency officials to, among other things, exchange information and explore state laws relative to export markets. While acknowledging that a private business relationship between a legislator and a state agency official carries risks, the Board advised that in order to deal with those risks the member avoid any business contact with respect to which "it might be reasonable to believe that he used his position as a member of the House of Representatives in order to coerce or intimidate the official ..."

- B. Absent "improper means," a legislator has discretionary authority to assist others by communicating with agencies, as well as others on issues which have historically been viewed as appropriate community or public purposes.

The legislative duty exception found in RCW 42.52.070 and RCW 42.52.160 does not apply when "improper means" are used to influence an agency (AO1995 – No. 1).

However, if "improper means" are not used to influence an agency, the legislative duty exception found in .070 (use of official position) and .160 (use of public resources) relates to both the discretionary and nondiscretionary authority legislators may exercise within the scope of their legislative employment. In AO1995 – No. 17, when asked about the propriety of preparing and sending certain letters at public expense to (1) a state agency recommending an entity for a grant; (2) a recipient of the Eagle Scout award; (3) a member of Congress re a recommendation for a service academy; and (4) a non-profit with an endorsement of its efforts; the Board determined that legislators were not limited to the legislative functions that fall within a strict reading of the State Constitution's legislative article. Legislators possess, said the Board, expansive authority to carry out community or public purpose functions.

This Board has, on a number of occasions, defined discretionary legislative duties and in some instances has concluded that use of official position or use of public resources would not be appropriate. (Most recently, see C2005 – No. 7, In Re Green, where a legislator sought to use public resources to intervene on behalf of one of the parties to a labor dispute viewed as private in nature.)

Also in AO1995 – No. 17, at page 4, the Board provided advice on how legislators and legislative employees might avoid the "improper means" prohibition and

communicate with agencies while exercising their discretionary authority to assist constituents. That advice is contained in the question and answers section of the Legislative Ethics Manual, 2005-2006 Edition, at page 14, and says in part:

**What is meant by the phrase “improper means?”**

Communications to state and local agencies that seek special favors or privileges, or which agency officials or employees might reasonably perceive as threatening.

**What are some examples of threatening communications?**

The following are examples of communications that would carry a high risk for being perceived as threatening:

- a communication in which the agency official or employee is reminded that the legislator chairs a committee having jurisdiction over the agency’s programs.
- a legislator’s persistent communications on behalf of a constituent or other party.
- a communication stressing that favorable agency action is important to the legislator or that the legislator will be disappointed if a favorable decision is not made, especially when the communication is from legislative leaders or committee chairs.

**VII. Conclusion and Order**

Based on a review of the Complaint and the Board’s investigation, the Board concludes that Respondents, Representative Mike Armstrong, Representative Cary Condotta, and Senator Linda Evans Parlette, exercised their discretionary authority to communicate with a state agency, the Washington State Department of Agriculture, on behalf of their constituents who had concerns about agency policies and the enforcement of those policies. No facts were discovered which suggest that the Respondents used "improper means," through either coercion, threats, or attempts to intimidate agency officials in the performance of their duties, including agency oversight of employee enforcement practices.

There is no reasonable cause to believe Respondents have violated RCW 42.52.070 or RCW 42.52.160 and the Complaint is hereby dismissed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2006

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James A. Andersen, Chair